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10/728,709	12/05/2003	Eric Ezra Youngberg	LFF1.PAU.01	9967

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EXAMINER

KING, ANITA M

ART UNIT PAPER NUMBER

3632

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/728,709

Applicant(s)

YOUNGBERG, ERIC EZRA

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 August 2004 and 05 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/5/03</u> . | 6) <input type="checkbox"/> Other: _____  |

This is the first office action for application number 10/728,709, Water Heater Security System, filed on December 5, 2003.

***Information Disclosure Statement***

The information disclosure statement filed December 5, 2003 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "12," "55," "57," and "83". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "75," in fig. 11. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The use of the trademark KEVLAR has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

The disclosure is objected to because of the following informality: on page 9, line 4 of paragraph 0049, "103" and "105" appear to be incorrect and should be --103a-- and --105a--, respectively.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-24 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the strap" in lines 18 and 20. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the water heater" bridging lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

There is an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. The preamble in claim 1 clearly indicates that a subcombination is being claimed, e.g., "a water heater security system adapted to hold the water heater in a generally fixed relationship with an adjacent wall..." This language would lead the examiner to believe that the applicant intends to claim only the subcombination of "a water heater security system," the water heater and the adjacent wall being only functionally recited. This presents no problem as long as the body of the claim also refers to the water heater and the wall functionally.

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The problem arises when the water heater and the wall are positively recited within the body of the claim, such as, "at least one strap assembly extending around at least a portion of the water heater," cited in lines 4-5 of claim 1 and "a first wall bracket attached to the wall," cited in line 10 of claim 1. The examiner cannot be sure if applicant's intent is to claim merely the security system or the security system in combination with the water heater and the wall.

Applicant is required to clarify what the claims are intended to be drawn to, i.e., either the security system alone or the combination of the security system, the water heater, and the wall. Applicant should make the language of the claim consistent with applicant's intent. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the subcombination and the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention, the language in the preamble should be made consistent with the language in the body of the claims. If the intent is to claim the subcombination, then the body of the claims must be amended to remove positive recitation of the combination. Also, see claim 14, for the same inconsistency.

Claim 6 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited terms. It is unclear if "the strap," in lines 5 and 7 of the claim is intended to refer to the original recitation of the terms "a first strap," in line 2 of claim 3 or "a second strap," in line 3 of claim 3.

Claim 8 recites the limitation "the second portions" bridging lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitations "the first portion" in line 7, "the second portion" in line 8, and "the strap" in lines 13 and 14. There is insufficient antecedent basis for these limitations in the claim.

In regards to claims 10 and 11, there is an inconsistency between the preamble of claim 9 and the subject matter of claims 10 and 11. The preamble in claim 9 clearly indicates that a subcombination is being claimed, e.g., "a buckle adapted to receive a strap end..." This language would lead the examiner to believe that the applicant intends to claim only the subcombination of "a buckle," the strap end being only functionally recited. This presents no problem as long as the body of the claim also refers to the water heater and the wall functionally.

The problem arises when the strap end is positively recited within the body of claims 10 and 11, such as, "the strap end is a first strap end," cited in line 2 of the claims. The examiner cannot be sure if applicant's intent is to claim merely the buckle or the buckle in combination with the strap end. Applicant should make the language of the claim consistent with applicant's intent. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the combination and the claims will be rejected accordingly.

Claim 12 recites the limitation "the first portion" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 9-12 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S.

Patent 6,665,913 to Kosh et al., hereinafter Kosh. Kosh discloses a buckle (20) adapted to receive a strap end in an adjustably fixed relationship, comprising: an inner portion (21) disposed generally in a first plate; an outer portion (22) bent back on the inner portion and disposed generally in a second plate parallel to the first plane; the outer portion forming a sidebar (32) with the inner portion, the sidebar being generally parallel to the first plane of the inner portion and the second plane of the outer portion and having a first pair of strap engagement edges (see Fig. 12); the inner portion and the outer portion defining with the sidebar a channel; a slide (30) movable within the channel generally parallel to the sidebar, the slide having a second pair of strap engagement edges whereby the strap (W) can be threaded around the slide and cinched tightly to engage the strap with the first and second pair of strap engagement edges and thereby form the fixed relationship with the buckle; wherein the strap end is a first strap end; the inner portion of the buckle is adapted for attachment to a second strap end (Col. 4, line 28ff); wherein the inner portion of the buckle is adapted for



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attachment to a wall (using slot, 26); and side flanges formed alternatively on the inner portion of the buckle and the slide of the buckle.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 14, 18, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,138,864 to Enochs in view of U.S. Patent 3,894,707 to Heard. Enochs discloses a security system, capable of holding a water heater in a generally fixed relationship with an adjacent wall, the system comprising: at least one strap assembly extendable around at least a portion of a cylindrical object (3); the strap assembly having a first end, a second end, and a flexible configuration; a first wall bracket (26); a second wall bracket (26); the first end of the strap assembly having a fixed relationship with the first wall bracket; wherein the strap assembly includes a first strap (28) having a first end and an opposing third end, and a second strap having a second end and an opposing fourth end; and a buckle (31) for attaching the third end of the first strap in a fixed relationship to the fourth end of the second strap.

Enochs discloses the claimed invention except for the limitations of the strap assembly having a woven configuration free of sharp edges; the second end of the strap assembly having an adjustable relationship with the second wall bracket; and the

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first outer end of and second outer end having adjustable relationships with the first and second wall brackets. Heard teaches a security system for mounting a cylindrical object to an adjacent wall, the system comprising a strap assembly having a first end, a second end, and a woven, flexible configuration free of sharp edges (Col. 3, line 29ff), a first wall bracket (24), a second wall bracket (22 or 50), the first end of the strap assembly having a fixed relationship with the first wall bracket (24, Fig. 1), the second end of the strap assembly having an adjustable relationship with the second wall bracket (22 or 50) to permit movement of the second end of the strap assembly between a first position wherein the strap has a first length between the first wall bracket and the second wall bracket, and a second position wherein the strap has a second length shorter than the first length between the first wall bracket and the second wall bracket, and wherein the first and second ends are adjustable with the first and second wall brackets (Fig. 6).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the material of the strap assembly in Enochs to have been woven and free of sharp edges as taught by Heard for the purpose of providing an alternative and mechanically equivalent means for holding the object.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the system in Enochs to have included the arrangement between the first and second ends of the strap assembly to have been fixed and adjustable in relation to the first and second wall brackets or adjustable in

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relation to first and second wall brackets for the purpose of accommodating different types and sizes of the cylindrical objects held by system.

Claims 1, 2, 13-16, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,202,977 to Chapman. Chapman discloses a water heater security system (20) adapted to hold a water heater (10) in a generally fixed relationship with and adjacent wall (12), the system comprising: at least one strap assembly extending around at least a portion of the water heater; the strap assembly having a first end, a second end, and a flexible configuration; a first wall bracket (21) attached to the wall on a first side of the water heater; a second wall bracket (21) attached to the wall on a second side of the water heater opposite the first side; the first end of the strap assembly having a fixed relationship with the first wall bracket; the second end of the strap assembly having an adjustable relationship with the second wall bracket to permit movement of the second end of the strap assembly between a first position wherein the strap (30) has a first length between the first wall bracket and the second wall bracket, and a second position wherein the strap has a second length shorter than the first length between the first wall bracket and the second wall bracket: wherein the strap assembly comprises a single strap (30) having the first end and the second end.

Chapman discloses the claimed invention except for the limitation of the strap assembly being woven and free of sharp edges or being constructed of a non-metallic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the strap assembly in Chapman to have been

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woven and free of sharp edges or non-metallic for the purpose of providing a strap assembly that will prevent injury to a person accidentally brushing against the strap assembly.

Claims 4, 5, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enochs combined with Heard and in further view of U.S. Patent 3,967,347 to Bickis, Sr., hereinafter, Bickis. Enochs combined with Heard disclose the claimed invention except for the limitation of the buckle having an adjustable relationship with one of the ends of the straps. Bickis teaches a buckle (1) having an adjustable relationship with a first end (41) of a strap (22) and a second end (42) of the strap. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the buckle in Enochs combined with Heard to have included the adjustable buckle as taught by Bickis for the purpose of providing more adjustability to the securing system in order to accommodate various water heaters having different sizes.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enochs combined with Heard and in further view of U.S. Patent 3,390,436 to Prete, Jr., hereinafter, Prete. Enochs combined with Heard disclose the claimed invention except for the limitation of a buckle having a first portion bent back on a second portion and a slide. Prete teaches a buckle (10) having a first portion (17) bent back over a second portion (11) and defining a channel therebetween, a slide (22) engageable by an end of a strap (33) and movable within the channel to form a fixed relationship between the buckle and the end of the strap, wherein the slide includes side flanges (24, 25) to

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maintain the slide in the channel, and wherein the second portion of the buckle has side flanges (12, 13) to maintain the slide in the channel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the buckle in Enochs to have included the buckle as taught by Prete for the purpose of providing an alternative, mechanically equivalent buckle for securing the ends of the strap to secure an object to wall surface.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman in view of Heard. Chapman discloses the claimed invention except for the limitation of the first end of the strap being adjustable with the first wall bracket. Heard teaches that it is known to have a strap assembly comprising a single strap (70) of flexible material having a first end in adjustable relationship with a first wall bracket (24) and a second end in adjustable relationship with a second wall bracket (50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the strap assembly in Chapman to have included the arrangement as taught by Heard for the purpose of providing more adjustability to the strap assembly in relation to the wall brackets.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 550,112 to Schneider

U.S. Patent 2,542,044 to Miller et al.

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U.S. Patent 2,754,560 to Warner et al.

U.S. Patent 2,919,481 to Finken et al.

U.S. Patent 3,805,988 to Walker et al.

U.S. Patent 4,136,422 to Ivanov et al.

U.S. Patent 5,487,518 to McCraney et al.

U.S. Patent 5,871,183 to Milluzzi

U.S. Patent 5,983,573 to MacKarvich

U.S. Patent 6,254,052 to Hubbard et al.


Schneider, Miller et al., Warner et al., Finken et al., Ivanov et al. discloses and adjustable buckle. Walker et al. discloses a clamping means for securing gas cylinders. McCraney et al. and Hubbard et al., both disclose a water heater restraint. Milluzzi discloses a flexible woven strap. MacKarvich discloses a tie-down strap frame connector.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Anita M. King  
Primary Examiner  
Art Unit 3632

December 29, 2004